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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, MARIELA
GONZÁLEZ, FREDDY JOSE ARAPE RIVAS,
M.H., CECILIA DANIELA GONZÁLEZ
HERRERA, ALBA CECILIA PURICA
HERNÁNDEZ, E.R., HENDRINA
VIVAS CASTILLO, A.C.A., SHERIKA BLANC,
VILES DORSAINVIL, and G.S.,

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY, and UNITED STATES OF
AMERICA,

Defendants.

Case No. 3:25-cv-01766-EMC

**STIPULATED CLAWBACK
AGREEMENT AND FEDERAL RULE OF
EVIDENCE 502(d) ORDER**

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1 The Court hereby orders pursuant to Rule 502(d) of the Federal Rules of Evidence, Rule 26(b) of
 2 the Federal Rules of Civil Procedure, and the Court's inherent authority that the production of a
 3 document, or part of a document, shall not constitute a waiver of any privilege or protection as to any
 4 portion of that document, or as to any undisclosed privileged or protected communications or information
 5 concerning the same subject matter, in this or in any other proceeding. This Order applies to attorney-
 6 client privilege, work-product protection as defined by Federal Rule of Civil Procedure Rule 26(b),
 7 governmental privileges, or any other applicable privilege. Nothing in this Order shall constitute an
 8 admission that any document disclosed in this litigation is subject to any of the foregoing privileges or
 9 protections, or that any party is entitled to raise or assert such privileges. Additionally, nothing in this
 10 Order shall prohibit parties from withholding from production any document covered by any applicable
 11 privilege or other protection.

12 The parties intend that this stipulated order shall displace the provisions of Fed. R. Evid.
 13 502(b)(1) and (2). That is, the disclosure of privileged or protected information, as described above, in
 14 this litigation shall not constitute a subject matter waiver of the privilege or protection in this or any other
 15 federal or state proceeding, regardless of the standard of care or specific steps taken to prevent disclosure.
 16 However, nothing in this Order shall limit a party's right to conduct a pre-production review of
 17 documents as it deems appropriate.

18 **I. DEFINITIONS**

- 19 1. "Document," as used herein, includes all items listed in Fed. R. Civ. P. 34(a)(1)(A) and
 20 (B).
- 21 2. "Documents Produced," as used herein, includes all documents made available for review
 22 or produced in any manner during this litigation.

23 **II. PROCEDURES**

24 The procedures applicable to a claim of privilege on a produced document and the resolution
 25 thereof shall be as follows:

- 26 1. If a party discovers a document, or part thereof, produced by another party that is
 27 privileged or otherwise protected, the receiving party shall promptly notify the producing party and must
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1 then return the document or destroy it and certify that it has been destroyed to the producing party. The
2 receiving party must also promptly identify, sequester, and destroy any notes taken about the document.
3 Nothing in this Order is intended to shift the burden to identify privileged and protected documents from
4 the producing party to the receiving party.

5 2. If the producing party determines that a document produced, or part thereof, is subject to a
6 privilege or privileges, the producing party shall give the receiving party notice of the claim of privilege
7 (“privilege notice”).

8 3. The privilege notice must contain information sufficient to identify the document
9 including, if applicable, a Bates number as well as identification of the privilege asserted and its basis.

10 4. Upon receiving the privilege notice, if the receiving party agrees with the privilege
11 assertion made, the receiving party must promptly return the specified document(s) and any copies or
12 destroy the document(s) and copies and certify to the producing party that the document(s) and copies
13 have been destroyed. The receiving party must sequester and destroy any notes taken about the
14 document. If a receiving party disclosed the document or information specified in the notice before
15 receiving the notice, it must take reasonable steps to retrieve it, and so notify the producing party of the
16 disclosure and its efforts to retrieve the document or information.

17 5. Upon receiving the privilege notice, if the receiving party wishes to dispute a producing
18 party’s privilege notice, the receiving party shall promptly meet and confer with the producing party.
19 The document(s) shall be sequestered immediately upon receiving the privilege notice and not be used by
20 the receiving party in the litigation (e.g. filed as an exhibit to a pleading; used in deposition) while the
21 dispute is pending. If the parties are unable to come to an agreement about the privilege assertions made
22 in the privilege notice, the receiving party may make a sealed motion for a judicial determination of the
23 privilege claim.

24 6. Pending resolution of the judicial determination, the parties shall both preserve and refrain
25 from using the challenged information for any purpose and shall not disclose it to any person other than
26 those required by law to be served with a copy of the sealed motion. The receiving party’s motion
27 challenging the assertion must not publicly disclose the information claimed to be privileged. Any
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1 further briefing by any party shall also not publicly disclose the information claimed to be privileged if
2 the privilege claim remains unresolved or is resolved in the producing party's favor.

3 7. If a document must be returned or destroyed as determined by the process above, that
4 document, along with copies and notes about the document, that exist on back-up tapes, systems, or
5 similar storage need not be immediately deleted or destroyed, and, instead, such materials shall be
6 overwritten and destroyed in the normal course of business. Until they are overwritten in the normal
7 course of business, the receiving party will take reasonable steps to limit access, if any, to the persons
8 necessary to conduct routine IT and cybersecurity functions.

9 8. This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court
10 for good cause shown.

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12 **IT IS SO STIPULATED**, through Counsel of Record.

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14 Dated: April 29, 2025 /s/ EmiLou MacLean
15 Counsel for Plaintiffs

16 Dated: April 29, 2025 /s/ William H. Weiland
17 Counsel for Defendants
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1 **IT IS ORDERED** that the forgoing Agreement is approved.

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3 Dated:

4 _____ UNITED STATES DISTRICT JUDGE
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Date: April 29, 2025

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/s/ EmiLou MacLean

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Respectfully submitted,

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Attorneys for the Defendants

SIGNATURE ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that each of the other Signatories have
concurred in the filing of this document.

ACLU FOUNDATION
OF NORTHERN CALIFORNIA

/s/ Emilou MacLean

Emilou MacLean